

THE POWER OF ONE PARTNER TO BIND THE FIRM BY SEALED INSTRUMENT.

assent clearly proved in another. Here, the offer was to prove that each of the partners, who were iron masters, and had lands in partnership, as well as chattles, were in the constant habit of making contracts under seal, which were ratified by the others, and the benefits enjoyed by them—that this contract, on the face of it for wood, was for wood for their iron works, and was actually used at them and the benefit enjoyed by them all. I would then have permitted this to go the jury, and if they found a clear assent either before or after, I would hold them bound. One partner is often bound in equity, differently from what he is at law, because he has received the benefit: *Lang v. Kppele*, 1 Bin. 123. I would confine the power to partnership transactions, and to property which came into partnership, and was enjoyed by them under a contract which they knew was made by one of the firm."

Subsequent cases, not only in Pennsylvania but in most of the other states, have established the law in substantial conformity with the principles of Judge Huston's opinion. The leading cases on this point, are *Gram v. Seton*, 1 Hall, 262, and *Cady v. Shepherd*, 11 Pickering, 400. In the former case the Superior Court of New York City, determined that one partner cannot make a sealed instrument, even though it be necessary in the usual course of business of the firm, unless authorized by the other partners, but authority need not be given expressly or under seal, but may be implied from the nature of the business or the conduct of the partners. The instrument sued on in that case was a charter party, but an elaborate opinion was given by Jones, C. J., covering the whole class of sealed instruments. In the other case, *Cady v. Shepherd*, the Supreme Court of Massachusetts held, that the instrument would be valid and bind the firm, if previously authorized or subsequently ratified by them, and that such authority or ratification may be by parol. It may now be taken as settled law in most of the states, that either previous authority to a partner or subsequent ratification, will make his deed valid to bind the firm, and that such authority or ratification may be by parol: *Fichthorn v. Boyer*, 5 Watts. 159; *Bond v. Aitkin*, 6 W. & S., 165 (overruling *Hart v. Withers*, 1 Penn. 285, and adopting the reasoning of Huston, J., already quoted); *Mackay v. Bloodgood*, 9 Johns. 285; *Smith v. Kerr*, 3 Comst., 144; *Sloan v. Stedman*, 4 Met. 548; *Pike v. Bacon*, 8 Shepl., 280; *Fleming v. Dunbar*, 2 Hill, S. C., 532; *Fant v. West*, 10 Rich. Law, 149; *Drumright v. Philpot*, 16 Ga. 424; *Grady v. Robinson*, 23 Ala. 289; *Gwin v. Rooker*, 24 Mo. 290; *Price v. Alexander*, 2 Greene, Iowa, 427; *Haynes v. Seachrest*, 13 Iowa, 455; *Henderson v. Barbee*, 6 Blackf., 26; *Day v. Lafferty*, 4 Pike, 450; *McDonald v. Eggleston*, 26 Vt., 154; *Remington v. Cummings*, 5 Wis., 138; *Wilson v. Hunter*, 14 Wis., 683; *Shirley v. Fearn*, 33 Mi., 653; *Fox v. Norton*, 9 Mich.

207; *Charman v. McLane*, 1 Or., 339; *Lowry v. Drew*, 18 Tex. 786.

In a few of the states, however, it would seem that the strict technical reasoning of the English cases has prevailed, and it is held that to make the deed good there must be express authority (or ratification) *under seal*: *Little v. Hazzard*, 5 Harrington, 291; *Turbeville v. Ryan*, 1 Humphreys, 113; *Napier v. Catron*, 2 Hump. 534. In Kentucky the question hardly seems settled. The early cases of *Trimble v. Coons*, 2 A. K. Mars, 275, and *Cummings v. Carsily*, 5 B. Mon., 74, held that the authority must be under seal, but the latter case of *Ely v. Hair*, 16 B. Mon. 230, goes upon the ground that parol authority or ratification will be sufficient, but does not notice or expressly overrule the previous decisions.

Trimble v. Coons, *Peirson v. Carter*, 3 Murphy, 321, and a few other of the earlier American cases, appear to sanction the English rule (founded on the ancient decisions, that the same piece of wax might serve for the seals of several obligors), that if the deed was sealed by one in the *actual presence* of the other, it would bind both, thus making a most singular confusion of the authority itself, and the evidence by which it is proved, the foundation of an unsubstantial distinction effectually disposed of by a few words in the opinion of Huston, J., in *Hart v. Withers*, already quoted. This distinction is now, however, abandoned in most of the American cases. In *Modisett v. Lindley*, 2 Blackf. 1 19, it is expressly held that presence is merely evidence of consent, for there the partner, though present, not having knowledge of the act, was held not bound. But in *Gardner v. Gardner*, 5 Cush. 483, it is held that signing by one person (whether partner or not) for another in *his presence*, and by his express direction, is a good signing by the latter; the opinion of Shaw, C. J., though very brief, and apparently not much considered, appearing to sustain the soundness of the distinction between an act done in or out of the presence of the party sought to be charged. In *Lambden v. Sharp*, 9 Humphreys, 224, it was held that where there are more signatures than seals, the court will presume that several of the parties adopted the same seal, but this presumption may be rebutted by evidence, and it will then be a question for the jury, whether the instrument is sealed by all. And if the signature be in the firm name only, it will be presumed to be the several signature and seal of all the partners, but open to rebuttal by plea and evidence as in other cases. To the same effect are *Davis v. Burton*, 3 Scam., 41, and *Hatch v. Crawford*, 2 Porter (Ala.), 54.

In all the foregoing cases it is to be borne in mind that the instrument must be made in the firm name, and purport to be the act of the firm. For if the partner though authorized to execute a deed in the partnership name, does in fact make it in his own name merely, it will bind himself only, and will moreover